

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, Case No. 3:15CR67
Toledo, Ohio
Plaintiff, Monday, June 29, 2015

vs.

BARTOLO DOMINGUEZ,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES R. KNEPP, II
UNITED STATES DISTRICT MAGISTRATE JUDGE

CHANGE OF PLEA HEARING

APPEARANCES:

For the Government: Dana Mulhauser,
Assistant United States Attorney

For the Defendant: Jeremy W. Levy, Esq.

Interpreter: Cindy Lepeley

Court Reporter: Bruce A. Matthews, RDR-CRR
Chief Court Reporter
United States District Courthouse
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 357-7207

Proceedings recorded by mechanical stenography, taken from a
digital audio recording, transcript produced by
computer-aided transcription.

1 (The defendant's responses were given through the
2 interpreter.)

3 THE COURT: Good afternoon. Please be seated.

4 The matter before the Court this afternoon is United
5 States of America versus Bartolo Dominguez. It is case
6 number 3:15CR67.

7 Mr. Dominguez is charged in an indictment filed back
8 in February of this year with, I believe, a charge of
9 violation of Title 8, United States Code, Section
10 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(II) and
11 1324(a)(1)(B)(i), harboring and trafficking aliens for
12 financial gain.

13 It's my understanding that the matter comes on this
14 afternoon for a change of plea. Present in the courtroom
15 are the defendant, Mr. Dominguez, his counsel, Mr. Levy. We
16 are joined also by interpreter, AO certified interpreter,
17 Ms. Cindy Lepeley, and here on behalf of the government is
18 Ms. Rice, is that right?

19 MS. MULHAUSER: Miss Mulhauser, Your Honor.

20 THE COURT: Mulhauser. I got the wrong one.
21 I'm sorry.

22 MS. MULHAUSER: That's all right. You're not
23 the first.

24 THE COURT: I had to pick one or the other of
25 you, so I apologize again.

1 Are the parties ready to proceed?

2 MS. MULHAUSER: We are, Your Honor.

3 MR. LEVY: Yes, Your Honor.

4 THE COURT: Ms. Mulhauser, we're doing an ECRO
5 recording here, and it actually works better if you just
6 stay seated.

7 MS. MULHAUSER: I can do that.

8 THE COURT: So you can stand up all you want
9 down on the second floor, but we'll just kind of stay seated
10 here and the tape sounds better, so...

11 Before I go any further, I can represent to you all
12 that Ms. Lepeley is a AO certified court interpreter. I'd
13 be happy to make any inquiry of her qualifications if either
14 of you would like me to do so.

15 MS. MULHAUSER: The government satisfied, Your
16 Honor.

17 MR. LEVY: No need, Your Honor.

18 THE COURT: Okay. Would you please swear the
19 interpreter?

20 (The interpreter was sworn in.)

21 THE COURT: So, Mr. Dominguez, good afternoon
22 again. My name is Judge Knepp, and I'm going to conduct
23 this proceeding today, I believe, but we have to go through
24 several steps, the first of which is your agreeing to me
25 conducting the proceeding. We'll talk about that.

1 We also have to make sure that you are competent to
2 enter your plea. We have to make sure you understand your
3 trial rights which are being waived if your plea is
4 accepted.

5 We have to make sure you understand fully the nature
6 of the charges against you, and part of understanding the
7 charges means understanding the maximum possible punishment.

8 And, finally, we have to make sure that your plea is
9 being entered voluntarily, that is, that you're not being
10 subjected to any threat by anyone or haven't been promised
11 anything that you shouldn't be promised.

12 Once we do all of that, assuming we're both satisfied,
13 at some point I'll ask you what your plea is and you can
14 tell me, but we have to go through several steps before we
15 get to that.

16 And before we even start going through those steps, I
17 want to make sure you understand something. Nothing that
18 we're doing here today in any way diminishes or waives your
19 right to counsel. Your right to counsel stays with you as
20 long as this case stays with you. So even though I'm going
21 to ask you multiple times today if you're willing to waive
22 certain rights, I'm never talking about your right to
23 counsel. You have the right to have the lawyer with you in
24 this matter as long as this matter is with you.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Similarly, I've arranged
3 for Ms. Lepeley to be here to assist us with interpreting.
4 I'll do my best to speak at a pace that allows her to keep
5 up. She's very good, but if at some point it becomes
6 confusing to you listening to me and to her and you'd like
7 us to either slow down or go over something again, all you
8 need to do is say so, and I'll stop and we'll go back over
9 it, because I really want your answer at the end of this
10 proceeding when I ask you, "Did you understand everything
11 that just happened here," to be yes. Okay?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: The first thing we have to talk
14 about is your agreeing to appear before me here today as
15 opposed to a District Judge. You may find the District
16 Judges to be both smarter and better looking than me, but I
17 can do much of the same stuff that they can do. Some of the
18 really important stuff, however, comes only after the
19 parties consent, and this is going to be one of those
20 things.

21 The only way I'll conduct this proceeding today is if
22 you consent. Otherwise, if you don't consent, Judge Carr
23 will do this proceeding himself, or one of the other Article
24 III Judges.

25 Do you understand that you have the right to have

1 these proceedings conducted by a United States District
2 Judge, that is, by a judge who is appointed by the
3 President, confirmed by the Senate, and serves a life tenure
4 on the bench?

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that I am not a
8 District Judge? Rather, I'm a United States Magistrate
9 Judge. I'm created by Congress, and I have to be
10 reappointed every eight years.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed with your
14 attorney my conducting this proceeding this afternoon, and
15 have you concluded it is in your best interest to proceed
16 before me here today even though I am not a United States
17 District Judge?

18 THE DEFENDANT: Yes.

19 THE COURT: As you know, this case is assigned
20 to Senior District Judge James Carr. Are you knowingly and
21 voluntarily giving up your right to plead before Judge Carr
22 or some other Article III Judge, and do you consent to
23 proceeding before me here today?

24 THE DEFENDANT: Yes.

25 THE COURT: And I have before me a written

1 consent to proceeding before Magistrate Judge. Did you have
2 this form interpreted for you such that you understood it
3 when you signed it?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did anyone make any threats or
6 promises to cause you to agree to appear before me here
7 today?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Okay. I will find that you have
10 knowingly and voluntarily consented to proceed before me
11 here today, and I'm going to cause the written consent to be
12 filed of record in the case.

13 Mr. Dominguez, it's my intention here momentarily to
14 place you under oath. The reason I do that is when
15 individuals speak in court, it has evidentiary significance.
16 When the lawyers talk, they speak as officers of the Court,
17 but when you speak, you do so as a witness or a party, and
18 in either event, that's done with sworn statements.

19 I caution you before I place you under oath that if
20 you were to say something that's not true once you're placed
21 under oath, you could be subject to prosecution for perjury.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Would you please stand and raise
25 your right hand?

1 (The Defendant was sworn in.)

2 THE COURT: Please be seated.

3 Would you please tell me your full name for the
4 record.

5 THE DEFENDANT: Bartolo Dominguez Nava.

6 THE COURT: And Mr. Dominguez, how old are
7 you, sir?

8 THE DEFENDANT: 54 years old.

9 THE COURT: Have you ever gone by any other
10 names?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you married, sir?

13 THE DEFENDANT: I live with someone, yes.

14 THE COURT: Okay. Do you have any dependent
15 children?

16 THE DEFENDANT: Not here.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: Third grade.

19 THE COURT: I take it your ability to read and
20 write in English is limited?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you able to understand me as
23 interpreted by Ms. Lepeley, though?

24 THE DEFENDANT: Yes, perfectly.

25 THE COURT: And remember, if at any point

1 that's not the case, just say something, and we'll do our
2 best to fix it. Okay?

3 THE DEFENDANT: Fine.

4 THE COURT: What kind of work have you done in
5 the last couple years?

6 THE DEFENDANT: Just working on farms.

7 THE COURT: How is your physical health?

8 THE DEFENDANT: Perfect.

9 THE COURT: All right. Are you under the
10 influence of any medicine, any drugs, any alcohol, anything
11 that would affect or impair your ability to understand
12 what's going on here today?

13 THE DEFENDANT: No.

14 THE COURT: Have you taken any drugs, any
15 alcohol, or any medicine in the last day or so?

16 THE DEFENDANT: No.

17 THE COURT: Is your mind clear?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand why you're here?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you ever been under the care
22 of a doctor or a clinic or a counselor or a hospital or any
23 person or thing like that for a mental health condition?

24 THE DEFENDANT: No.

25 THE COURT: Mr. Levy, have you had any

1 difficulty communicating with Mr. Dominguez either directly
2 or through an interpreter?

3 MR. LEVY: No.

4 THE COURT: Have you discussed the case with
5 him?

6 MR. LEVY: Yes.

7 THE COURT: Do you believe he understands the
8 nature and purpose of the hearing today?

9 MR. LEVY: Yes, I do.

10 THE COURT: Do either you or Ms. Mulhauser
11 have any reservation as to Mr. Dominguez' competence here
12 today?

13 MR. LEVY: No.

14 MS. MULHAUSER: No, Your Honor.

15 THE COURT: Well, neither do I. I've had the
16 opportunity to interact with Mr. Dominguez. I've listened
17 to his answers to my questions. I've observed his affect
18 and demeanor here in the courtroom, all of which has been
19 entirely appropriate and, frankly, pleasant.

20 In light of all of that, with the concurrence of
21 counsel that they don't see any problem, I will find that
22 Mr. Dominguez is competent, and we will proceed.

23 Mr. Dominguez, have you had enough time to speak with
24 Mr. Levy during the time that this case has been pending?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Have you told him everything you
2 know about the case?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you satisfied with the advice,
5 the competence, the work, the legal representation that
6 Mr. Levy has provided in this case?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you discussed all the
9 possible defenses to the case or how you might defend the
10 case if you were going to take it to trial or whether it
11 would be a better move to enter into some kind of a plea?

12 Have you had those discussions with Mr. Levy?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, remember, you can stop at any
15 point today if you need to talk with him about something.
16 I've got as much time as you need.

17 Mr. Levy, have you had enough time to consult with and
18 prepare Mr. Dominguez at each stage of this proceeding?

19 MR. LEVY: Yes.

20 THE COURT: Ms. Mulhauser, I wonder if you
21 would summarize for us the charge to which Mr. Dominguez is
22 contemplating a plea here today and tell us what the maximum
23 statutory penalties that would be associated with a
24 conviction of that charge would be.

25 MS. MULHAUSER: I would, Your Honor.

1 Mr. Dominguez is charged under 8, U.S.C., 1324. The
2 maximum length of imprisonment is ten years. The maximum
3 statutory fine is \$250,000. The maximum period of
4 supervised release is three years, and there is a
5 hundred-dollar special assessment.

6 THE COURT: Mr. Dominguez, is that consistent
7 with your understanding of the charge?

8 THE DEFENDANT: Yes.

9 THE COURT: And just to be clear, I think
10 there's also a forfeiture specification here. Is he
11 pleading to that as well, Ms. Mulhauser?

12 MS. MULHAUSER: He is, Your Honor. Pursuant
13 to 8, U.S.C., 1324(b) and 28, U.S.C., 2461, the defendant is
14 consenting to the forfeiture of a 2010 Econoline van.

15 THE COURT: Okay. Thank you.

16 So, Mr. Dominguez, I have to go through with some
17 degree of specificity your trial rights so that we can
18 conclude that you have understood those rights and knowingly
19 waive those rights, so I'm going to do that now.

20 Under the Constitution of the United States, you have
21 the right to have a trial. That trial could either be to a
22 judge or more probably to a jury.

23 At that trial, you'd have the right to confront and
24 cross-examine any witness that the government might bring in
25 to testify against you.

1 You'd also have the ability to use the authority of
2 the Court to compel the attendance of any witness that you
3 wished to have come into court and testify on your behalf.

4 Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: If the case went to trial, the
7 government would have to prove your guilt beyond a
8 reasonable doubt, and that's a really high standard of
9 proof. It's the highest standard that we have in the court
10 system.

11 You would not have to prove your innocence. You come
12 into the trial with something called a presumption of
13 innocence, meaning that you are presumed innocent, and the
14 government can only overcome that presumption by proving
15 your guilt with evidence that the jury finds to be
16 sufficient to say that you are guilty beyond a reasonable
17 doubt.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: If the case went to trial, you
21 could testify if you wanted to, or you could choose not to
22 testify. If you chose not to testify, that couldn't be held
23 against you. The prosecution couldn't make a comment about
24 that. The jury couldn't hold it against you. Indeed, they
25 would be instructed that they shouldn't expect to hear a

1 defendant testify; that we all have a right to not testify
2 if we're on trial; and it would be a violation of their oath
3 as a juror to hold it against you if you chose not to
4 testify.

5 Do you understand all of that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you understand you have the
8 right to maintain your plea of not guilty here?

9 THE DEFENDANT: I didn't know, no.

10 THE COURT: Okay. Well, let me tell you, you
11 have the right to maintain your plea of not guilty, and if
12 you maintain your plea of not guilty, you'll have the right
13 to have a speedy trial, and you'll have the right to have a
14 lawyer represent you at that trial, and if you can't afford
15 to hire a lawyer for the trial, the Court will appoint a
16 lawyer for you.

17 Do you understand all of that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand, sir, that you
20 do not have to plead guilty even if you are guilty? You can
21 take the case to trial. You don't have to plead guilty.

22 Do you understand that?

23 THE DEFENDANT: Yes, but I think it was a
24 small mistake.

25 THE COURT: Okay. Well, that's something you

1 got to decide. What I have to tell you is: You don't have
2 to plead guilty, and if you don't think you're guilty, you
3 shouldn't plead guilty.

4 THE DEFENDANT: It's the first time that I'm
5 in this situation. It's been a long time, and I want to get
6 this over with.

7 THE COURT: Okay. Well, I'm not sure that's a
8 good reason to -- to plead guilty, because this is an
9 important thing that we're talking about. And what I'm
10 suggesting to you is, if you don't believe you're guilty, I
11 wouldn't want you to plead guilty, because I'm going to make
12 you admit -- if you're going to plead guilty, that's only
13 going to be after the government tells me what they would
14 have proven and you agree with it.

15 So if you're not prepared to do that, you don't want
16 to enter a guilty plea.

17 MR. LEVY: May I have a minute to talk to him?

18 THE COURT: Yeah, sure.

19 (Pause.)

20 THE COURT: Let's begin that line of inquiry
21 again.

22 Do you, Mr. Dominguez, understand that you have a
23 right to maintain your plea of not guilty here?

24 THE DEFENDANT: Yes. Yes, but I'm going to
25 accept the responsibility.

1 THE COURT: Okay. That's fine. But I have to
2 tell you also, you don't have to plead guilty even if you
3 are guilty. That's your decision, but nobody -- I'm not
4 telling you you have to plead guilty.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you decided to take the case to
8 trial, like we talked about a second ago, and if that trial
9 was before a jury, we would bring in a large number of
10 jurors from around this division of the district, and we'd
11 ask them questions.

12 The purpose of those questions would be to determine
13 if a particular individual could be a fair and impartial
14 juror, and by that I mean could they judge the evidence
15 based on what they see and hear here in the courtroom and
16 follow the instructions of law that the judge gives them.

17 Once we had a panel of individuals that the judge was
18 convinced could be fair and impartial, there would still be
19 an opportunity for you and the government to excuse a fair
20 number of those jurors, and you wouldn't have to give any
21 reason at all, and those are called peremptory challenges.

22 Once that process was completed, we'd have a panel of
23 12 individuals. That would be the jury. The jury would be
24 made up of 12 citizens. Those 12 people would have to agree
25 unanimously before they could return a verdict.

1 Do you understand all of that?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand everything I've
4 told you so far?

5 THE DEFENDANT: Yes.

6 THE COURT: If you went to trial and if you
7 were found guilty, you'd have a right to appeal your
8 conviction under certain circumstances at least. You'd also
9 have the ability to appeal your sentence under certain
10 circumstances. I call that to your attention, because a
11 little while ago, I read what I believed to be a plea
12 agreement that I think you may be contemplating entering
13 into, and I can tell you that in that plea agreement, I see
14 a waiver of appeal, and it's a very broad waiver of appeal.
15 Indeed, it's a waiver of appeal that is as broad as it can
16 possibly be.

17 There are certain -- there are certain bases for an
18 appeal that you cannot waive as a matter of law. Those go
19 to things like prosecutorial misconduct, ineffective
20 assistance of your own counsel, if the judge were to
21 sentence you in excess of the statutory maximum, or if the
22 judge were to sentence you in excess of the maximum
23 guideline. But beyond that, you are waiving your right to
24 appeal.

25 You need to understand that our Court of Appeals tends

1 to enforce waivers like that, so you wouldn't want to enter
2 into that agreement unless you were, in fact, willing to
3 waive your right to appeal.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: So if you enter into a guilty plea
7 as you're contemplating here today, you're waiving all of
8 these rights that we've just talked about. If your plea is
9 accepted, there's not going to be a trial. Rather, what's
10 going to happen is, I'm going to enter a recommendation on
11 the docket.

12 Judge Carr is going to review what I did here today.
13 Assuming he concurs with my findings, he will enter a
14 judgment of guilty, and ultimately he will sentence you on
15 the basis of that judgment and on the basis of a presentence
16 investigative report which will be prepared between now and
17 the time of your sentence.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: So I don't know to what extent you
21 are presently possessed of any of these rights, but I have
22 to tell you as an individual who stands convicted of a
23 felony in Federal Court, you can expect that you will be
24 giving up the right to vote, the right to hold public
25 office, the right to serve on a jury, and the right to

1 possess any kind of firearm in this country.

2 Do you understand all of that?

3 THE DEFENDANT: Yes.

4 THE COURT: Let's turn now to the plea
5 agreement, Mr. Dominguez, and I want to call a couple things
6 to your attention.

7 First of all, can you tell me, have you had an
8 opportunity to review this document and have it read to you
9 by the interpreter and discuss it with Mr. Levy?

10 THE DEFENDANT: Yes.

11 THE COURT: As you see, there's a spot down at
12 the bottom right corner of every page where it says
13 "Defendant's initials." Do you see that?

14 THE DEFENDANT: Yes.

15 THE COURT: Don't put your initials there, or
16 if you've already -- if you've already done that, don't send
17 that up here to me unless you're prepared for that to mean
18 to me, when I see your initials there: Judge, I understand
19 every word on this page and I agree with it.

20 So don't send me this document with your initials on
21 it unless you're willing to make that statement to me: I
22 understand every word on this page and I agree with it.

23 Okay?

24 THE DEFENDANT: Okay.

25 THE COURT: Now, what I'm going to do is, I'm

1 going to ask Ms. Mulhauser to summarize this plea agreement
2 for us on the record here. What she says should be
3 completely consistent with your understanding of what this
4 document says. Of course, what the document actually says
5 is what controls, but what she says should be consistent
6 with what the document says, which should also be consistent
7 with what you understand it to say.

8 However, if you hear something from Ms. Mulhauser that
9 isn't consistent with your understanding, we need to figure
10 out what's wrong. Either she's wrong, you're wrong, or
11 there's something wrong in the document. But my expectation
12 is that those three things will all be in agreement, that
13 is, what the document says, what Ms. Mulhauser says, and
14 what you understand.

15 So listen carefully and let's make sure that's the
16 case.

17 Ms. Mulhauser, I'd ask you to summarize the key
18 elements of the plea agreement on the record here. You can
19 skip over the factual basis. I'll come back to that as sort
20 of the last thing that we do. Okay?

21 MS. MULHAUSER: All right. Your Honor, in
22 the -- the nature of this plea agreement, the defendant
23 agrees to plead guilty to the single count in the
24 indictment. In return, the government agrees not bring any
25 other charges that are related to these offenses or that the

1 government is aware of.

2 Your Honor, the two sides have agreed on the basis of
3 the sentencing guidelines, which is in paragraph 17 of the
4 agreement, which puts the defendant at a category 15. The
5 parties also agree that they will recommend to the Court
6 that they follow those advisory guidelines.

7 The defendant also waives his right to an appeal to
8 the extent that those rights are appealable.

9 And the agreement does include a forfeiture provision
10 in which the defendant agrees to forfeit an Econoline van as
11 the proceedings of this enterprise.

12 THE COURT: Thank you. Is that consistent
13 with your understanding, Mr. Dominguez?

14 THE DEFENDANT: Yes.

15 THE COURT: I'm going to go through and hit
16 just a couple of things here to pick up with you. You've
17 heard earlier talk about what the maximum penalty that could
18 be imposed here is. I need to make sure that you understand
19 that following any prison term, you could be subjected to a
20 period of supervised release, and if you were subjected to
21 supervised release and if you were to violate those terms,
22 you could be exposed to a maximum period of incarceration in
23 excess of the statutory maximum, because you would also not
24 expect to get credit for time served at the time a violation
25 of supervised release occurred.

1 You also need to understand that restitution could be
2 ordered as a condition of your sentence in this case. That
3 could include requiring you to pay some or all of the costs
4 of your confinement or supervised release.

5 You've also heard that you will be required to forfeit
6 property to the government.

7 Ms. Mulhauser mentioned briefly that you and the
8 government have agreed to a guideline calculation except you
9 do not have an agreement as to your Criminal History
10 Category, so we really don't know what your final guideline
11 calculation is going to be until such time as that final
12 criminal history is prepared and the presentence
13 investigative report is prepared.

14 And even when we do know what your final guideline
15 calculation is, that's not binding on the judge who
16 sentences you.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 MS. MULHAUSER: Your Honor, may I also point
20 out --

21 THE COURT: Yes.

22 MS. MULHAUSER: -- I forgot one of the
23 government's own obligations under this plea agreement,
24 which is that we agree that Mr. Dominguez merits a two-point
25 acceptance of responsibility reduction.

1 THE COURT: Okay. Well, that's good.

2 The guidelines that are calculated are advisory in
3 nature. They are one thing that the judge must consider,
4 but the judge has to consider some other things that are set
5 forth in Section 3553(a). There are several factors that
6 the Court has to look at, all of which are designed to come
7 up with a sentence that is sufficient to accomplish the
8 needs of that statute without being excessive. So that's
9 the nomenclature that we use, sufficient, but not excessive
10 in terms of a sentence.

11 But most notably, the guidelines are one factor, but
12 not the only factor. What I need to call your attention
13 specifically is, as we sit here today, neither you nor I,
14 nor the lawyers know what Judge Carr, or whatever judge
15 ultimately sentences you, is going to do. We may have some
16 idea based on expectations or past practice, but it's just
17 that. It's an expectation. It's not binding on the judge.

18 What you need to understand is if the judge happens to
19 sentence you more severely than you presently expect, that
20 is not a basis to undo your guilty plea here today. It
21 might or might not be a basis for an appeal, but under no
22 set of circumstances that I can think of would it be a basis
23 for you to come back and withdraw your guilty plea.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: So we're not going to be in a
2 position to know what your final guideline calculation,
3 which as I said is one of the important pieces of advisory
4 information, we're not going to know what that is until
5 after the presentence investigative report is prepared. And
6 typically the lawyers get a chance to look that in draft
7 form and talk to the probation officer to maybe fix any
8 mistakes that are in that report, and then if there are
9 still things that they disagree with, they can file
10 objections, and the trial court will rule on those
11 objections before your sentencing here.

12 Do you understand all that?

13 THE DEFENDANT: Yes.

14 THE COURT: Ms. Mulhauser, could you go back
15 and pick up for us the factual basis for the plea?

16 What I'm doing now, Mr. Dominguez, I don't let someone
17 plead guilty unless they tell me they did what the
18 government says they did.

19 When we have a plea agreement, typically that's easy,
20 because what we call the relevant conduct is reduced to
21 writing in the plea agreement, so my expectation is that the
22 AUSA will read that summary of the factual basis and
23 relevant conduct contained in paragraph 22 into the record,
24 and she'll say that if the case went to trial, this is what
25 the government could prove. And when she gets done, I'm

1 going to ask you if she's right.

2 Ms. Mulhauser?

3 MS. MULHAUSER: Thank you, Your Honor.

4 Your Honor, if this case were to have gone to trial,
5 the government would prove beyond a reasonable doubt the
6 following: From in or around January 2013, and continuing
7 to on or around December 17th, 2014, in the area of Marion,
8 Ohio, which is located in the Northern District of Ohio,
9 Western Division, defendant knowingly or in reckless
10 disregard of the fact that an alien had come to, entered, or
11 remained in the United States in violation of law,
12 transported an alien within the United States, by means of
13 vehicular transportation in furtherance of such violation of
14 law and for the purpose of commercial advantage and private
15 financial gain.

16 Defendant owned and operated Rabbit Cleaning,
17 Incorporated, a limited liability company incorporated in
18 the state of Ohio. Rabbit Cleaning contracted with various
19 companies, including Haba Corporation and Papagos,
20 Incorporated to provide manual labor at egg farms in the
21 Marion, Ohio area.

22 Defendant hired a number of illegal aliens, all or
23 most of whom were Guatemalan citizens, as employees to
24 perform manual labor at the egg farms.

25 As part of the business arrangements, defendant drove

1 illegal aliens in vans, including a 2010 Ford Econoline
2 E-350 van, bearing Ohio plate PHW2661, from a trailer park
3 in Marion, Ohio to work at egg farms located in Croton,
4 Mount Victory, LaRue, and Goshen, Ohio.

5 Defendant's company was paid based on the amount of
6 work his employees performed. Therefore, the more
7 employees, parentheses illegal aliens, that defendant
8 employed, the greater the defendant's profit. Defendant
9 transported at least six, but no more than 24 illegal
10 aliens.

11 At the time the defendant drove these illegal aliens
12 to and from work at the egg farm, he knew or was in reckless
13 disregard that they were not legally present in the United
14 States.

15 Defendant's transportation of these illegal aliens
16 furthered their unlawful presence in the United States
17 because it:

18 1. Induced the aliens to illegally travel to the
19 United States knowing that they would have jobs waiting for
20 them with defendant's company.

21 2. Knowingly provided the aliens after avenue to pay
22 off their smuggling debt.

23 3. Assisted the aliens in maintaining employment and,
24 therefore, income.

25 And 4, reduced the chances that the aliens' illegal

1 status would be discovered by law enforcement since they
2 would not be forced to use other forms of transportation to
3 and from work.

4 Defendant transported the illegal aliens for
5 commercial advantage and his own financial gain.

6 THE COURT: Did you hear all that,
7 Mr. Dominguez?

8 THE DEFENDANT: Yes.

9 THE COURT: Is she right?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Levy, do you wish to make any
12 additions or corrections to the factual basis for the plea?

13 MR. LEVY: No, Your Honor.

14 THE COURT: Mr. Dominguez, do you wish to
15 correct anything about that factual basis or add anything to
16 it?

17 THE DEFENDANT: No.

18 THE COURT: So having heard the summary of the
19 plea agreement from Ms. Mulhauser and listening to me talk
20 to you about your rights and so forth, can you tell me, do
21 you still want to enter into this plea agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you prepared to tell me by
24 your initials at the bottom of every page that you
25 understand every word on that page and that you agree with

1 it?

2 THE DEFENDANT: Yes.

3 THE COURT: Did anyone make any threats or
4 promises to cause you to enter into this plea agreement?

5 THE DEFENDANT: No.

6 THE COURT: Have you had enough time to talk
7 about the plea agreement with Mr. Levy or anyone else that
8 you need to talk to about it?

9 THE DEFENDANT: Yes.

10 THE COURT: Has the plea agreement been
11 executed, Mr. Levy?

12 MR. LEVY: It has, Your Honor. And I should
13 mention for the record that prior to the case being called,
14 I did have an opportunity to review this with the
15 interpreter present. We went over all of it together while
16 he was in custody at the jail. We had plenty of time to go
17 over all of it, and I had an opportunity to answer all of
18 his questions.

19 Two minor changes were made between then and now,
20 which I have gone over with him with the interpreter present
21 today, and I do believe that he understands everything and
22 has executed the document.

23 May I approach?

24 THE COURT: Sure.

25 Is that all correct, Mr. Dominguez?

1 THE DEFENDANT: Yes.

2 THE COURT: Well, I have before me a copy of
3 the plea agreement. It has Mr. Dominguez' initials at the
4 bottom of every page, and we already talked about what that
5 means.

6 Sir, this is your signature on the last page?

7 THE DEFENDANT: Yes.

8 THE COURT: I will cause the plea agreement to
9 be filed of record in the case for Judge Carr's
10 consideration.

11 MS. MULHAUSER: Your Honor, may I ask a
12 question?

13 THE COURT: Yes.

14 MS. MULHAUSER: I apologize. I'm not a
15 regular in this --

16 THE COURT: I know.

17 MS. MULHAUSER: -- district. I appreciate
18 your patience with me. I know in some districts, some
19 judges go over immigration consequences.

20 THE COURT: You know what? I did neglect
21 that, and actually what normally happens here is that's part
22 of the summary that you do. Since you're not usually in
23 here, I forgot about that.

24 We do need to talk about, Mr. Dominguez, it's
25 contained in the plea agreement, but I'll talk about it with

1 you specifically as well, you do understand that as a result
2 of being convicted of a felony, to the extent you are not a
3 United States citizen, it could have adverse consequences
4 upon your immigration status, up to and including causing
5 your removal from the United States by way of deportation
6 following any potential prison term; do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Was that enough?

9 MS. MULHAUSER: Yes, Your Honor. I would just
10 add that it might as well bar him from re-entry in the
11 future.

12 THE COURT: Yeah. I think that's probably
13 true and would certainly also be at least an impediment to
14 any pursuit of citizenship, but it certainly has profound
15 potential immigration consequences, sir.

16 And you do understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Mr. Dominguez, how do you
19 plead to the indictment?

20 THE DEFENDANT: I'm guilty.

21 THE COURT: Did anyone threaten you to get you
22 to say that?

23 THE DEFENDANT: No.

24 THE COURT: Did anyone promise you anything
25 other than what's contained in this plea agreement?

1 THE DEFENDANT: No, nothing.

2 THE COURT: Are you telling me you're guilty
3 because you are, in fact, guilty of doing what they said you
4 did?

5 THE DEFENDANT: I plead guilty. It was a
6 small mistake.

7 THE COURT: Okay. Well, I'm asking you, are
8 you guilty of the charge that's set forth in this
9 indictment? Without qualifying it as a big or a small
10 mistake, this alleges that you violated federal law, you
11 committed a crime.

12 Are you telling me that you are guilty of that?

13 THE DEFENDANT: I'm guilty.

14 THE COURT: Okay. Since you've told me that
15 you are, in fact, guilty as charged in the indictment, the
16 plea agreement which you have signed and agreed to contains
17 an adequate factual basis for your plea, you've had the
18 assistance of a lawyer, you know of your right to a trial
19 which is being waived, you know what the maximum possible
20 punishment is, as well as what the advisory guidelines may
21 provide, on the basis of the answers given by you under oath
22 here in court on the record in the presence of your lawyer,
23 as well as having listened to the remarks of counsel for
24 both sides, I hereby make or renew the following findings.

25 I find the defendant competent to make this plea. He

1 was advised of his constitutional rights. He made a
2 knowing, intelligent, and voluntary waiver of those rights.

3 Further, he was advised of his limited rights to
4 appeal both the plea and the sentence.

5 I further find the plea was made knowingly,
6 voluntarily, and with an understanding of the charge and the
7 maximum penalties involved, the effect of the plea, and
8 with, again, an adequate factual basis.

9 Therefore, I will enter this day a recommendation for
10 a plea of guilty which will be submitted to the District
11 Judge. Assuming he concurs with my findings here today, a
12 judgment of guilty shall enter forthwith.

13 To expedite the completion of the case, the matter
14 will be immediately referred to the United States Pretrial
15 Office for -- I'm sorry, Pretrial and Probation Office for
16 preparation of a presentence investigative report.

17 The sentencing in this case will take place on October
18 26 at 10:30 a.m. So 10/26 at 10:30.

19 Counsel, if that presents a problem, you need to reach
20 out to Judge Carr's chambers, but right now we have it
21 scheduled for that date and time, again, 10/26 at 10:30.

22 The parties are instructed to review the presentence
23 investigative report, frankly, early and often. If there
24 are mistakes or errors in that report that can be corrected
25 informally by consultation with each other and the probation

1 officer, I encourage you to do that.

2 If there need to be objections filed to that report,
3 those need to be filed well in advance of the sentencing
4 hearing so that Judge Carr has an opportunity to consider
5 those and rule upon them in advance of the hearing. He does
6 not -- he does not appreciate late filed objections to
7 presentence investigative reports. I'll even go so far as
8 to say they make him kind of angry, so please don't do that.

9 Additionally, if you wanted to consider any
10 presentence -- I'm sorry, presentence memoranda, get those
11 in in advance, too, because he tends to set a bunch of
12 sentencings on a certain day, so his ability to review a
13 whole bunch of stuff the night before is kind of restricted,
14 so get anything in that you wish him to consider at the time
15 of sentencing well in advance of the sentencing hearing.

16 Mr. Levy, Judge Carr wants you to meet with your
17 client not less than one week prior to the sentencing
18 hearing to prepare him for that. He really also does not
19 react well when it appears that the defendant isn't ready to
20 go at the time of the sentencing hearing. So spend some
21 time with your client ahead of time so that he's prepared
22 for the sentencing hearing, so he's not surprised by
23 anything that's taking place there.

24 Mr. Dominguez, I need to tell you to cooperate fully
25 and completely with the probation officer who prepares your

1 presentence investigative report. If you fail to do so,
2 that will be called to Judge Carr's attention and would
3 presumably be taken into consideration by him when he makes
4 the decision about what the appropriate sentence for your
5 case should be. I would think that that would be
6 particularly important to have when he's considering whether
7 to grant acceptance -- credit for acceptance of
8 responsibility, as we talked about here earlier today, which
9 would otherwise be recommended in the plea agreement. Okay?

10 As you know, the plea agreement isn't binding on him.
11 There's a joint recommendation in there. You want him to
12 follow that, so you need to cooperate with the probation
13 officer who prepares the presentence investigative report.

14 It's my understanding that Mr. Dominguez' detention
15 status is not up for reconsideration here today, that that's
16 continuing the status quo.

17 Ms. Mulhauser, I appreciate you reminding me to cover
18 the immigration consequences earlier.

19 Is there anything else you can think of that we should
20 cover before we conclude here today?

21 MS. MULHAUSER: Nothing else, Your Honor.

22 THE COURT: Okay. Mr. Levy, can you think of
23 anything else we should do by way of making sure that your
24 client has -- has had everything he needs to have by way of
25 procedure here today looking out for him?

1 MR. LEVY: No, Your Honor.

2 THE COURT: Okay.

3 MR. LEVY: Thank you.

4 THE COURT: Mr. Dominguez, did you understand
5 everything that happened here today?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any questions, sir?

8 THE DEFENDANT: No.

9 THE COURT: Okay. We will be adjourned. I
10 wish you well.

11 (Hearing concluded.)

12

13 C E R T I F I C A T E

14

15 I certify that the foregoing is a correct
16 transcript of the record of proceedings taken from a digital
17 audio recording of the above-entitled matter, to the best of
18 my ability.

19

20

21 S/Bruce A. Matthews July 6, 2015
22 Bruce A. Matthews, RDR-CRR Date

23

24

25